Application No. 10/699,141
Amendment in Response to Non-Final
 Office Action dated January 13, 2009
Reply to Office Action of October 14, 2008

Docket No.: 03-8012

REMARKS

I.   Introductory Comments

Claims 1-34 were previously pending in the application. Claims 1, 22, 29, and 33 are independent claims, and each has been amended. Dependent claims 2 and 4 have been canceled, and dependent claims 3 and 5 have been amended to depend from claim 1. Therefore, claims 1, 3, and 5-34 are currently pending.

In the Office Action, the Examiner rejected claims 1-28 under 35 USC § 101 as allegedly directed to non-statutory subject matter. The Examiner rejected claims 1-34 under 35 USC § 103(a) as being unpatentable over the combination of the Examiner's Official Notice, and several non-patent references. Specifically, the Examiner rejected claims 1 and 8-13 under Section 103(a) as being unpatentable over the combination of the Examiner's Official Notice and Philip L. Roth & Philip Bobko, *A Research Agenda for Multi-Attribute Utility Analysis in Human Resource Management*, 7 Hum. Resource Mgmt. Rev. 3, 341-368 (1997) (hereinafter Roth). The Examiner also rejected claims 2, 3, 15-19, 22, 24, and 25-32 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, and Jeffrey R. Edwards & Mark E. Parry, *On the Use of Polynomial Regression as an alternative to Difference Scores in Organizational Research*, 36 Acad. of Mgmt. J. 6, 1577-1613 (Dec., 1993) (hereinafter Edwards). The Examiner rejected claims 4, 5, and 14 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, and Linda Trocine & Linda Malone, *Finding Important Independent Variables Through Screening Designs: A Comparison of Methods*, Proc. of the 2000 Winter Simulation Conf., 749-754 (2000) (hereinafter Trocine). The Examiner also rejected claims 6, 7, and 33 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, and Tom Jacobson, *Reaching New Heights*, 22 Credit Union Mgmt., Madison 6 (June 1999) (hereinafter Jacobson). The Examiner rejected claims 20 and 21 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, Edwards, and Jacobson. The Examiner also rejected claim 23 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, Edwards, and Trocine. Lastly,

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the Examiner rejected claim 34 under Section 103(a) as being unpatentable over the combination

of Official Notice, Roth, Jacobson, and Edwards.

In view of the following arguments, all claims are believed to be in condition for

allowance. Therefore, this response is believed to be a complete response to the Office Action.

However, Applicants reserve the right to set forth further arguments supporting the patentability

of their claims, including the separate patentability of dependent claims not explicitly addressed

herein, in future papers.[1]

II.   Claims 1, 3, and 5-28 Are Directed to Statutory Subject Matter Under Section 101.

The Examiner rejected claims 1-28 under Section 101 because the claimed invention was

allegedly directed to non-statutory subject matter. (Office Action, page 8.) Specifically, the

Examiner stated that "a § 101 process must (1) be tied to another statutory class (such as a

particular apparatus) or (2) transform underlying subject matter (such as an article or materials)

to a different state or thing," and that "[c]laims 1 and 22 are non-statutory since [they] may be

performed within the human mind." (Office Action, page 9.)

Applicants disagree that claims 1-28 could have been performed within the human mind.

Claims 1-28 were directed to statutory subject matter as clarified by the Court of Appeals for the

Federal Circuit in their recent *Bilski* decision. (*In re Bilski*, 2007-1130 (Fed. Cir. Oct. 30,

2008).) Nevertheless, independent claims 1 and 22 have each been amended to address the

Examiner's concerns and to facilitate prosecution. Independent claims 1 and 22, as amended, are

each now directed to a "computer implemented method." In addition, claims 1 and 22 now also

recite "storing employee task data in a database of a computing system," and "analyzing said

productivity scores . . . utilizing said computing system."

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1. As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections,
Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be
applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references,
assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such
requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in
the future.

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Notably, the Federal Circuit stated that "[a] claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus." (*Bilski* at 24, emphasis added.) Independent claims 1 and 22 are now more clearly directed and "tied to a particular machine or apparatus," and therefore recite statutory subject matter under Section 101. Dependent claims 3, 5-21, and 23-28 depend from independent claims 1 and 22, and are therefore also directed to statutory subject matter. Thus, for at least the reasons stated above, the Examiner's Section 101 rejection has been fully addressed and should be withdrawn.

III.   Official Notice

A. No Documentary Support For Any Instance of Official Notice.

The Examiner used several instances of Official Notice as a basis to form an obviousness rejection of every pending claim. Previously, Applicants challenged each use of Official Notice and requested the Examiner to provide documentary evidence to support the various instances of Official Notice. The Examiner has not provided any documentary support.

Instead, the Examiner supported his multiple instances of Official Notice by arguing that "none of the takings of Official Notice regard esoteric facts," and therefore each instance of Official Notice was proper and legitimate. However, the Examiner ignored specific guidance from the MPEP regarding the proper use of Official Notice. The MPEP explicitly states that Official Notice should only be used in limited circumstances, and even then, Official Notice should only be used if the Examiner can provide instant and unquestionable documentary support. (MPEP § 2144.03, emphasis added.) In addition, the MPEP requires the Examiner to provide such documentary support if the Official Notice is challenged. (Id.)

B. No Instance of Official Notice is Admitted Prior Art.

MPEP Section 2144.03 repeatedly states that the Examiner is required to support each instance of Official Notice with documentary evidence or an affidavit if an instance of Official Notice is challenged. The Examiner relied on Section 2144.03(C) for the proposition that each instance of Official Notice is now deemed admitted prior art. Specifically, the Examiner alleged

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that because Applicants' previous challenges were "inadequate," that now the Examiner's various instances of Official Notice are now admitted prior art.

Section 2144.03(C) is entitled "If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence." (MPEP § 2144.03(C), emphasis added.) However, the Examiner's interpretation of this section would exempt the Examiner from providing the required documentary evidence. Such an interpretation contradicts the explicit requirements of Section 2144.03 and controlling case law that specifically require an Examiner to provide documentary evidence if an instance of Official Notice is challenged. In addition, challenging Official Notice by requesting documentary support is an adequate and proper traversal of an Examiner's reliance on Official Notice as discussed in Section 2144.03(C), and therefore no instance of Official Notice can be deemed as admitted prior art.

Previously, Applicants challenged the Examiner's Official Notice by requesting the Examiner to support each instance of Official Notice with documentary evidence. The Examiner summarily dismissed Applicants' arguments as "blanket traversals" that fail to "specifically point[] out why the ON's are not considered to be common knowledge in the prior art." (Office Action, page 3.) Further, the Examiner argued that because Applicants' "traversal is inadequate, the subjects of the Official Notices are taken to be admitted prior art." (Id.) The Examiner's interpretation of Section 2144.03(C) contradicts the explicit requirements stated in Section 2144.03 – namely that the Examiner must provide documentary evidence to support each instance of Official Notice.

Applicants' previous challenge of Official Notice and request for documentary support are adequate traversals. Therefore, no instance of Official Notice is deemed as admitted prior art. The Examiner cannot become exempt from providing the required documentary evidence simply by stating that Applicants' demand for documentary evidence is inadequate. Therefore, Applicants renew their request for documentary support for each instance of Official Notice.

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C. Official Notice Is Not Limited to the Two Explicitly Stated Instances.

The Examiner stated that the taking of Official Notice was limited to the following: (1) "that it is old and well known in an organization for individuals to perform different tasks;" and (2) "that it is old and well known to remove outliers from a probabilistic distribution." (Office Action, page 3.) However, the Examiner's reliance on Official Notice is not limited to these two instances. When discussing the alleged teachings of Roth, for example, the Examiner stated that "MAU is known in the art to thus be a technique for incorporating various elements or inputs to determine a score (i.e. multi-attribute)." (Office Action, page 4, emphasis added.) Applicants specifically disagree with the assertion that "MAU is known in the art to thus be a technique for incorporating various elements or inputs to determine a score (i.e. multi-attribute)."

In another example regarding dependent claim 8, the Examiner , the Examiner took Official Notice that "the idea of performing addition to modify the scores taught by Roth would have been well within the reach of a person of ordinary skill in the art." (Office Action, page 7.) Applicants specifically disagree with the assertion that "performing addition to modify the scores taught by Roth would have been well within the reach of a person of ordinary skill in the art."

In yet another example regarding independent claim 29, the Examiner took Official Notice that "performing the method steps taught by Roth and Edwards using computer software running on a computer system is old and well known in the art. Using this approach is known to make method steps faster and more efficient since they are running on a computer." (Office Action, page 19.)

To the extent that the Examiner is relying on Official Notice in these examples, Applicants request the Examiner to specifically acknowledge the taking of Official Notice and provide the required documentary evidence to support each taking of Official Notice.

D. The Two Explicit Instances of Official Notice Are Improper.

The Examiner stated that the taking of Official Notice was limited to the following: (1) "that it is old and well known in an organization for individuals to perform different tasks;" and (2) "that it is old and well known to remove outliers from a probabilistic distribution." (Office

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Action, page 3.) These two instances of Official Notice are improper as being nothing more than overbroad generalizations. Both statements are so overbroad that neither is applicable to Applicants' claims, nor could such overbroad statements be properly combined with the cited references, as discussed in more detail below.

Therefore, the Examiner must provide appropriate evidence in the next Office Action, or withdraw the obviousness rejections of every pending claim. Furthermore, the required documentary evidence must also comply with the rules and laws of obviousness if the Examiner intends to maintain the obviousness rejections. For example, the Examiner must show that the required documentary evidence can be properly combined with the other cited references to maintain the stated obviousness rejections.

IV.   Independent Claim 1 Is Patentable Over The combination of Official Notice and Roth.

The Examiner rejected claims 1 and 8-13 under Section 103(a) as being unpatentable over the combination of Official Notice and Roth. As discussed above, the Examiner must provide appropriate documentary evidence to support the Official Notice or withdraw the rejection. As discussed in detail below, the Examiner's reliance on Roth is misplaced, as Roth is not directed to the recitations of Applicants' claims.

A. Roth is not directed to the recitations of Applicants' Claims.

Roth is directed to a method of analyzing a potential human resource management decision, which Roth describes as a method "to help guide decision making and estimate the value of Human Resource Management (HRM) interventions." (Roth at 341.) For example, Roth notes that "[m]ost current applications of utility analysis have used the Brogden-Cronbach-Gleser (BCG) utility model to estimate the usefulness of an HRM intervention to an organization." (Id. at 342.) Notably, Roth explains that the BCG model focuses on "the number of individuals affected by an intervention, the duration of the effect of the intervention, the standard deviation of the value of job performance in dollars, and the effect size of the intervention." (Id.) The purpose of the BCG model is "to estimate the dollar value of [a human

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resource management] intervention." (Id.) By comparison, Roth states that "[multi-attribute

utility analysis] may be defined as a set of procedures to guide decision making that integrate[s]

multiple outcomes from a course of action into a single number that represents the usefulness of

that course of action." (Id.) Clearly, the teachings of Roth are not directed to the recitations of

claim 1.

        B. ***"storing employee task data in a database of a computing system, wherein said
            employee task data includes a number of tasks completed and an amount of time
            spent on at least one completed task"***

      Claim 1, as amended, now includes the identified recitation. Roth says nothing at all

about "employee task data," and clearly fails to teach or suggest "storing employee task data in a

database." Further, Roth fails to teach or suggest that "employee task data includes a number of

tasks completed and an amount of time spent on at least one completed task," as recited in

independent claim 1.

        C. ***"generating sets of task scores based on a selected model design of task
            assignments utilizing said employee task data"***

      The Examiner alleged that Roth teaches "generating sets of task scores based on a

selected model design of said task assignments" in a section entitled "Constructing Measures."

(Office Action, page 10.) Specifically, the Examiner alleged that Roth discloses that "sets of

task scores are generated based on the Multi-Attribute Utility (MAU) approach to evaluating

performance." Applicants previously argued that the cited portion fails to teach or suggest this

recitation. In addition, claim 1 has been amended and now recites in part "generating sets of task

scores . . . utilizing said employee task data." As previously discussed, Roth says nothing at all

about "employee task data," and therefore clearly fails to teach or suggest "generating sets of

task scores . . . utilizing said employee task data," as now recited in claim 1.

      The Examiner responded to Applicants' arguments by relying on an additional instance

of Official Notice. The Examiner stated that "MAU is known in the art to thus be a technique for

incorporating various elements or inputs to determine a score (i.e. multi-attribute)." (Office

Action, page 4.) Applicants disagree that "MAU is known in the art to thus be a technique for

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incorporating various elements or inputs to determine a score (i.e. multi-attribute)," and

specifically request the Examiner to provide appropriate documentary evidence to support this

instance of Official Notice.

In addition, the Examiner appears to summarize the identified recitation, and then allege

that Roth suggests the Examiner's version of the recitation. Clearly, such an evaluation of

Applicants' claims is improper. Specifically, the Examiner' alleged that Roth teaches

"generating sets of task scores based on a selected model design of said task assignments" by

stating:

> Since Roth suggests that there are multiple dimensions from which
> a person must perform, this suggests a model of what those
> dimensions would be. Job performance, i.e. evaluating a person's
> performance, as is claimed, is thus met by measuring a person's
> performance according to a set of dimensions, i.e. a selected model
> design of task assignments. The fact that job performance is taught
> using MAU suggests that the activities and tasks that a person
> performs on their job is something that would be evaluated using
> MAU.

(Office Action, pages 4-5.) The Examiner appears to take several logical leaps to conclude that

Roth teaches "generating sets of task scores based on a selected model design of said task

assignments." For example, the Examiner states that Roth "*suggests* that there are multiple

dimensions from which a person must perform." The Examiner then goes a step further by

stating that "this *suggests a model* of what those dimensions would be." However, even if Roth

suggests that there are multiple dimensions from which a person must perform, such a

suggestion in no way further *suggests* "a model of what those dimensions would be." The

Examiner then goes another step further by stating that "[j]ob performance, i.e. evaluating a

person's performance, as is claimed, is thus met by measuring a person's performance according

to a set of dimensions, i.e. a selected model design of task assignments." Applicants disagree

with the Examiner's logical leap that somehow *suggesting* that there are multiple dimensions

from which a person must perform can lead to teaching "generating sets of task scores based on a

selected model design of said task assignments."

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Roth fails to mention "task scores" or "task assignments" in the cited portion, and clearly fails to teach or suggest "generating sets of task scores based on a selected model design of task assignments utilizing said employee task data," as recited in claim 1. Roth's disclosure relating to "attributes" is unrelated to "sets of task scores" and to "a selected model design of task assignments," as recited in claim 1.

D. *"selecting a centralized composite design as said model design"*

The Examiner acknowledged that Roth fails to teach or suggest the identified recitation, and cited Trocine for the deficiencies of Roth. (Office Action, page 20.) Specifically, the Examiner alleged "a factorial design is a centralized composite design," and that "Trocine teaches limiting the number of variables (i.e. a limited factorial design) to limit the number of model runs that need to be performed (e.g. with k=15 a fractional factorial still means that 128 experiments or runs of the model need to be performed)." (Office Action, page 20.) However, Trocine is not directed to Roth or Applicants' claims, and cannot be combined with Roth. Nor is there any motivation or suggestion to combine Roth and Trocine.

Trocine is directed to designing experiments, and more specifically to "finding important independent variables through screening designs" for use in "a simulation model or [a] production system." (Trocine at 749.) Notably, Trocine states that "[t]hese important variables can later be used to optimize the [simulation] model." "Simulation models typically represent complex and stochastic systems. Experimentation on these systems is assumed to be time consuming and can be expensive in terms of computation. Minimizing the number of experiments while maximizing information is the ultimate goal." (Id.) Clearly Trocine is neither applicable to the teachings of Roth, nor to Applicants' claims.

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E. *"performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores"*

The Examiner alleged that Roth teaches the identified recitation in a section is entitled "The Need for Multi-Attribute Utility." (Office Action, pages 10-11.) Specifically, the Examiner alleged that in this section Roth teaches that "the evaluations of the employees result in sets of task scores for the various attributes (e.g. interviews and cognitive ability test)." (Id.) However, the disclosure in this section is completely unrelated to this recitation of claim 1.

The Examiner responded to Applicants' arguments by stating that "setting up a MAU analysis to evaluate a set of task assignments *suggests* performing evaluations to assign scores to the tasks." (Office Action, page 5.) Further, the Examiner alleged that "MAU analysis in the context of performance management, as taught by Roth, addresses the need to perform MAU on a variety of tasks to evaluate employees on those tasks." (Id.) However, Roth makes no such statements, nor includes any such teaching or suggestion. As previously discussed, Roth is directed to analyzing a human resource decision.

In the cited portion, i.e. page 343, Roth analyzes a hypothetical potential human resource decision involving a process to interview job candidates using a single attribute utility model, as opposed to using the multi-attribute utility model. The multi-attribute utility model is the focus of the remainder of the reference, and relied upon by the Examiner to reject most of the recitations of claim 1. In paragraphs 2 and 3, Roth begins to analyze a hypothetical decision to help a human resource management (HRM) department decide whether or not to change their interviewing methods. Specifically, Roth states that "an HRM department may be interested in hiring 25 district sales managers." (Roth at 343.) The HRM department may attempt to decide to interview the managers "using either a cognitive ability test or a structured behavioral interview to replace their unstructured interview." (Id.) Roth continues on to analyze the hypothetical decision using the BCG utility model, which is a single attribute utility model and not a multi-attribute utility model. Nowhere in the disclosure cited by the Examiner does Roth teach or suggest "performing a plurality of evaluations of said sets of task scores," nor does Roth even mention "assigning productivity scores," as recited in claim 1.

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F.   *"analyzing said productivity scores to determine productivity parameters, wherein analyzing said productivity scores comprises applying linear regression techniques to said productivity scores utilizing said computing system"*

The Examiner alleged that Roth teaches "analyzing said productivity scores to determine productivity parameters" in a section entitled "Estimating Weights and Utility Functions." (Office Action, page 11.) Specifically, the Examiner alleged that Roth discloses that "the combination of the attributes into a single score requires analyzing the scores to determine the weights (i.e. productivity parameters) for how they are combined." (Id.) However, Roth fails to mention "task scores" or "task assignments," in the cited portions, and clearly fails to teach or suggest "generating sets of task scores based on a selected model design of said task assignments."

Further, the Examiner admitted that Roth fails to teach or suggest "wherein analyzing said productivity scores comprises applying linear regression techniques to said productivity scores," as now recited in independent claim 1. (Office Action, page 15.) The Examiner then cited Edwards to compensate for the deficiencies of Roth.

The Examiner alleged that Edwards teaches "applying linear regression techniques to understand the relationship between measurable factors such that coefficients can be determined so those factors can be combined (the factors, e.g. X and Y, are functions to be combined to provide a score)." (Office Action, page 16.) The Examiner also stated that Roth "teaches that there are separate functions, i.e. utility functions, that are weighted to be combined such that a score results." The Examiner then alleged that "[i]t would have been obvious . . . to modify the teachings of Roth to include the determination of coefficient values as provided by the linear regression techniques of Edwards, because it would improve the determination of the coefficients of the utility functions to be combined by using the well known and reliable technique of linear regression." (Office Action, page 16.)

However, Roth does not mention using "coefficients of the utility functions," as the Examiner suggests, and Roth clearly fails to mention a need for any additional mathematical analysis technique, let alone linear regression. Notably, Roth states that the "use of a MAU

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approach requires combining the various attributes . . . [by] developing a set of functions that

weight each attribute and combin[e] the attributes into a single metric." (Roth at 343.) Once

combined into a single metric, there is no need to perform linear regression, and there is no

reason to combine the teachings of Edwards with Roth.

> ### G. *"applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees"*

The Examiner alleged that Roth teaches the identified recitation in the section discussing

the hypothetical single-attribute analysis. Specifically, the Examiner stated that "the various

score [sic] generated in an MAU analysis are combined such that the result of the MAU analysis

results in a single score." (Office Action, page 11.) However, Roth fails to mention

"productivity parameters," "employee task scores," or "performance measures," and clearly fails

to teach or suggest "applying said productivity parameters to employee task scores for said

employees to obtain said performance measures for said employees."

In the portion cited by the Examiner, e.g. the last paragraph of page 343, Roth discusses

the basics of how an MAU approach differs from the single attribute utility analysis. Roth states

that an "MAU approach requires combining the various attributes important to decision makers,"

and that "[t]his can be accomplished by developing a set of functions that weight each attribute

and combin[e] the attributes into a single metric." (Roth at 343.) Roth states that "[a]n attribute

is a variable or set of variables that is affected by the decision and is of concern to decision

makers." (Id. at 349, emphasis added.) However, an attribute, as disclosed by Roth, is not

related to a "productivity parameter," a "task score," or a "performance measure," as recited in

claim 1. Therefore, Roth clearly fails to teach or suggest "applying said productivity parameters

to employee task scores for said employees to obtain said performance measures for said

employees."

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H. The Examiner's Reliance on Official Notice is Improper

The Examiner admitted that "Roth does not teach where the evaluation method is for evaluating different employees who are performing different tasks." (Office Action, page 11.) The Examiner then took Official Notice that "it is old and well known in the art for individuals in an organization to perform different tasks." (Office Action, pages 11-12.) The Examiner's Official Notice is inappropriate because it is overbroad, vague, and fails to address the specific recitation in Applicants' claims. Further, it appears that the Examiner is simply using Applicants' claims as a road map for the obviousness rejection. Specifically, the Examiner is using the purpose of Applicants' claims as the motivation to modify Roth with the Examiner's Official Notice. Such an analysis amounts to the Examiner's inappropriate use of Applicants' claims to form the obviousness rejection.

The Examiner's Official Notice is so overbroad as it cannot possibly relate to Applicants' claims. Individuals within different organizations *may or may not* perform different tasks, *may or may not* be required to perform such different tasks, and *may or may not* be evaluated based on their performance of differing tasks. Generalizing that individuals perform different tasks ignores the complexity of an employee's role in an organization, and further ignores the complexities of analyzing employee performance. However, the Official Notice, even if accepted as prior art, fails to teach or suggest "applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees," as recited in claim 1. Further, neither the Examiner's Official Notice, nor Roth, includes any suggestion or motivation to modify the teachings of Roth to render the identified recitation obvious.

The Examiner then made a drastic leap in logic to state that "it would have been obvious . . . to modify [the teachings of Roth] to include applying *the utility function idea* to the different tasks performed by different employees." (Office Action, pages 11-12, emphasis added.) The Examiner reasoned that this drastic modification would be obvious "because it would provide a way to provide a comparative measure of different employee's contributions to a firm's productivity, thus improving the ability of the firm to value different employees." (Id.) The

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Examiner is using Applicants' claims as both a road map and as a motivation to modify the teachings of Roth to perform the recitations of Applicants' claims. The Examiner's reasoning appears circular – it would be obvious to modify Roth to perform Applicants' claimed recitations because it could then perform Applicants' claimed recitations.

For at least the foregoing reasons, independent claim 1 is patentable over Roth and the Examiner's Official Notice. Thus, Applicants respectfully request the Examiner to withdraw the rejection of independent claim 1, as well as claims 3 and 5-21 depending therefrom.

V. Independent Claim 22 Is Patentable Over The combination of Official Notice, Roth, and Edwards.

The Examiner rejected claims 2, 3, 15-19, 22, 24, and 25-32 under Section 103(a) as being unpatentable over the combination of Official Notice, Roth, and Edwards. As discussed above, the Examiner must provide documentary evidence to support the Official Notice or withdraw the rejection. Furthermore, the cited references fail to teach or suggest numerous recitations found in independent claim 22.

Independent Claim 22

Claim 22 reads:

> A computer implemented method of determining productivity parameters for evaluating employee performance for employees having differing task assignments, comprising:
> storing employee task data in a database of a computing system, wherein said employee task data includes a number of tasks completed and an amount of time spent on at least one completed task;
> generating sets of task scores based on a selected model design of task assignments utilizing said employee task data;
> selecting a centralized composite design as said model design;
> performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores; and
> applying linear regression techniques to said productivity scores utilizing the computing system to obtain said productivity parameters using an expression having a form

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$$PS_t(F_{t1}, F_{t2}, ..., F_{tK}) = \alpha_t + \sum_{k=1}^{K} \beta_{tk} F_{tk} + \sum_{k=1}^{K} \sum_{k'=1}^{K} \gamma_{tkk'} F_{tk} F_{tk'}, \text{ where}$$

F_{tk} is a measured value for a k task of assignment t,

PS_t is a productivity score for said assignment t as a function of said measured
values, $F_{t1}, F_{t2}, \ldots F_{tK}$, and

α_t, β_{tk} and $\gamma_{tkK'}$ are said productivity parameters.

The Examiner rejected claim 22 under Section 103(a) based on the combination of the
Examiner's Official Notice, Roth, and Edwards. More specifically, the Examiner alleged that
"[c]laim 22 recites similar limitations to those addressed by the rejection of Claims 2 and 3 . . .
and are therefore rejected under the same rationale." (Office Action, page 18.) However, Claim
22 is not identical to claims 2 and 3. As discussed in detail above regarding claim 1, Roth fails
to teach or suggest multiple recitations found in claim 22. Furthermore, the Examiner's reliance
on Official Notice is inappropriate.

    A. ***"storing employee task data in a database of a computing system, wherein said***
      employee task data includes a number of tasks completed and an amount of time
      spent on at least one completed task"

Claim 22, as amended, now includes the identified recitation. As discussed above
regarding claim 1, Roth says nothing at all about "employee task data," and clearly fails to teach
or suggest "storing employee task data in a database." Further, Roth fails to teach or suggest that
"employee task data includes a number of tasks completed and an amount of time spent on at
least one completed task," as recited in independent claim 22.

    B. ***"generating sets of task scores based on a selected model design of task***
      assignments utilizing said employee task data"

The Examiner alleged that Roth teaches "generating sets of task scores based on a
selected model design of said task assignments" in a section entitled "Constructing Measures."
(Office Action, page 10.) As discussed above regarding independent claim 1, Roth says nothing
at all about "employee task data," and therefore clearly fails to teach or suggest "generating sets
of task scores . . . utilizing said employee task data," as now recited in independent claim 22.

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C. *"selecting a centralized composite design as said model design"*

The Examiner acknowledged that Roth fails to teach or suggest the identified recitation, and cited Trocine for the deficiencies of Roth. As discussed above regarding independent claim 1, Trocine is not directed to Roth or Applicants' claims, and cannot be combined with Roth.

D. *"performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task score"*

The Examiner alleged that Roth teaches the identified recitation in a section is entitled "The Need for Multi-Attribute Utility." (Office Action, pages 10-11.) Specifically, the Examiner alleged that in this section Roth teaches that "the evaluations of the employees result in sets of task scores for the various attributes (e.g. interviews and cognitive ability test)." (Id.) However, as discussed above regarding independent claim 1, the disclosure in this section is completely unrelated to the identified recitation.

E. *"applying linear regression techniques to said productivity scores utilizing the computing system to obtain said productivity parameters"*

The Examiner alleged that Edwards teaches "applying linear regression techniques to understand the relationship between measurable factors such that coefficients can be determined so those factors can be combined." (Office Action, page 16.) However, as previously discussed regarding claim 1, neither Roth now Edwards, whether viewed alone or in combination, teach or suggest the identified recitation.

Thus, for at least the reasons setting forth the patentability of claim 1, independent claim 22 is patentable over the cited references. Thus, Applicants respectfully request the Examiner to withdraw the rejection of independent claim 22, as well as claims 23-28 depending therefrom.

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VI.   Independent Claims 29 Is Patentable Over the Cited References.

The Examiner rejected claim 29 under Section 103(a) based on the combination of the

Examiner's Official Notice, Roth, and Edwards. More specifically, the Examiner alleged that

"[c]laim 29 recites similar limitations to those addressed by the rejection of Claim 22 above by

Roth, and is therefore rejected under the same rationale." (Office Action, page 19.) The

Examiner admitted that

> Roth and Edwards do not explicitly teach performing his [sic]
> method using computer readable medium containing instructions
> for causing a computer system to perform method steps, however
> Official Notice is taken that performing the method steps taught by
> Roth and Edwards using computer software running on a computer
> system is old and well known in the art.

(Office Action, page 19.) However, claim 29 is not identical to claim 22. Furthermore, as

discussed in detail above, the Examiner's reliance on Official Notice is inappropriate, and the

Examiner must provide documentary evidence to support each instance of Official Notice, or

withdraw the rejection. Also, as discussed in detail above regarding independent claims 1 and

22, Roth and Edwards, whether viewed alone or in combination, fail to teach or suggest multiple

recitations found in independent claim 29. Thus, for at least the reasons setting forth the

patentability of independent claims 1 and 22, independent claim 29 is patentable over the cited

references. Thus, Applicants respectfully request the Examiner to withdraw the rejection of

independent claim 29, as well as claims 30-32 depending therefrom.

VII.   Independent Claims 33 Is Patentable Over the Cited References.

The Examiner rejected claim 33 under Section 103(a) based on the combination of the

Examiner's Official Notice, Roth, and Jacobson. More specifically, the Examiner alleged that

"[c]laim 33 recites similar limitations to those addressed by the rejection of Claim 6 above by

Roth and Jacobson, and is therefore rejected under the same rationale." (Office Action, page

22.) However, claim 33 is not identical to claim 6. Furthermore, as discussed in detail above,

the Examiner's reliance on Official Notice is inappropriate, and the Examiner must provide

documentary evidence to support each instance of Official Notice, or withdraw the rejection. In

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addition, as discussed in detail above regarding independent claims 1 and 22, Roth fails to teach or suggest multiple recitations found in claim 33. Thus, for at least the reasons setting forth the patentability of claims 1 and 22, independent claim 33 is patentable over the cited references. Thus, Applicants respectfully request the Examiner to withdraw the rejection of independent claim 33, as well as claim 34 depending therefrom.

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CONCLUSION

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested, and the Examiner is respectfully requested to pass this application to issue. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013 under order number 65632-0559. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Dated: January 13, 2009   Respectfully submitted,

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